

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

JESSIE RIVERA,

Plaintiff,

v.

RAVI GUPTA and CESAR LOPEZ,

Defendants,

ORDER

13-cv-56-wmc

On October 7, 2015, the court granted summary judgment in favor of defendants Ravi Gupta and Cesar Lopez, and dismissed this case. Plaintiff has filed a notice of appeal (dkt. #51) and a motion for leave to proceed *in forma pauperis* (dkt. #58). For reasons set forth briefly below, the court will grant that motion.

As an initial matter, the federal *in forma pauperis* statutes require a district court to certify whether an appeal is “not taken in good faith” or that the party is “not otherwise entitled to proceed” as an indigent litigant. FED. R. APP. P. 24(a)(3). The court has carefully reviewed all pertinent matters in this civil action. Based on this review and the court’s clear recollection of the relevant proceedings, the court certifies that plaintiff has not filed his appeal in bad faith for purposes of Rule 24(a)(3).

Because plaintiff is incarcerated, his eligibility for leave to proceed *in forma pauperis* is governed by the Prison Litigation Reform Act (“PLRA”), 28 U.S.C. § 1915(g), which bars an inmate from proceeding without prepayment of the filing fee if he has, on three or more prior occasions, while incarcerated or detained brought an action or appeal in a court of the United States that was dismissed as frivolous, malicious, or failure to state a

claim upon which relief may be granted unless the prisoner is under imminent danger of serious physical injury. Plaintiff has no “strikes” or sanctions against him for engaging in frivolous litigation while in prison and there does not appear to be any other impediment to indigent status. Therefore, after considering plaintiff’s motion and supporting documentation, which includes a certified copy of his inmate trust fund account statement, the court concludes that plaintiff is eligible to proceed as an indigent litigant.

Although plaintiff has been found eligible to proceed *in forma pauperis*, the PLRA requires indigent inmates to pay the full amount of the docketing fee for his notice of appeal (\$505) in increments, starting with an initial partial payment, pursuant to the formula found in 28 U.S.C. § 1915(b)(1)-(2). Based on plaintiff’s inmate trust fund account statement, the court finds that plaintiff is able to make an initial partial filing fee payment of \$39.33, which will be due no later than December 15, 2015. Thereafter, plaintiff shall pay the remainder of the \$505 appellate docketing fee in monthly installments according to 28 U.S.C. § 1915(b)(2).

ORDER

IT IS ORDERED that:

- 1) Plaintiff Jessie Rivera’s notice of appeal is not taken in bad faith for purposes of Fed. R. App. P. 24(a)(3).
- 2) Rivera’s motion for leave to proceed *in forma pauperis* (dkt. #58) is GRANTED.
- 3) No later than December 30, 2015, Rivera shall submit a check or money order made payable to the Clerk of Court in the amount of \$39.33 as an initial partial payment of the docketing fee for his appeal. Thereafter, plaintiff shall pay the remainder of the \$505 appellate docketing fee in monthly installments according to 28 U.S.C. § 1915(b)(2).

- 4) If plaintiff fails to make his initial partial fee payment as directed by December 30, 2015, the clerk's office will notify the court of appeals so that it may take whatever action it deems appropriate with respect to this appeal.

Entered this 9th day of December, 2015.

BY THE COURT:

/s/

WILLIAM M. CONLEY

District Judge